IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6117 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHIMANBHAI MAGANBHAI PATEL

Versus

GANPATBHAI MOTIBHAI GOHEL

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Appearance:

1. Special Civil Application No. 6117 of 1991

MR JITENDRA M PATEL for Petitioner No. 1-3

MS. SHRADDHA TRIVEDI, A.G.P. for Respondent No. 2

Respondent no. 1 served

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 31/07/2001

ORAL JUDGEMENT

Heard the learned Advocates.

The petitioners have challenged the judgement and order dated 30th November, 1990 passed by the learned Gujarat Revenue Tribunal (hereinafter referred to as "the Tribunal") in Revision Application No. TEN.B.A.264 of 1989.

The petitioners are the successors in title to one Ganpatsingh Motisingh - respondent no. 1 herein, to the lands situated at village Sherkhi Taluka, District Vadodara. The said Ganpatsingh Motisingh had possessed agricultural lands admeasuring 98 acres, 27 gunthas of village Sherkhi. 70 acres of the said lands were sold by the said Ganpatsingh Motisingh to the present petitioners in the month of November, 1979. Thus on the relevant date, that is on 1st April, 1976 said Ganpatsingh Motisingh held agricultural lands to the extent of 98 acres, 78 gunthas i.e. far in excess of the ceiling limit. It is an admitted fact that, the ceiling limit per unit is 36 acres. In the proceeding under the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act") the lands to the extent of 59 acres, 27 gunthas were held surplus. The petitioners' claim that substantial part of the said lands was Kotar lands and cannot be considered to be agricultural lands was rejected by the Authorities below. The finding of the Authorities below was confirmed by the Tribunal under its judgement and order dated 21st August, 1984 rendered in Revision Application No. 1743/1983. Feeling aggrieved, the petitioners had preferred Special Civil Application No. 2034/1984 before this Court. The said petition was sought to be withdrawn with a view to making an application for review before the Tribunal. The petition was, under order dated 13th March, 1985 [Coram:-R.C. Mankad,J.] permitted to be withdrawn. The petitioners, thereafter, preferred Review Application No. 13/85 before the Tribunal. The only question raised before the Tribunal was that of the additional one-fifth of the unit. Keeping in view the number of six members of the family of the Ganpatsingh Motisingh, in accordance with Section 6(3B) of the Act, the Tribunal under its order dated 29th August, 1985 accepted the claim for one-fifth of the unit made by the petitioners, and remanded the matter to the Mamlatdar with a direction to the petitioners to produce the birth certificates of the family members of the said Ganpatsingh Motisingh. After the remand the Mamlatdar under his order dated 4th July, 1988 observed that the birth certificates of the children of Ganpatsingh Motisingh were placed on the records of the matter; that on the `specified date' the said Ganpatsingh Motisingh had six members in his family, and that he was entitled to one-fifth of a unit in addition to one unit retainable by him. However, while giving effect to his order he allowed the petitioners to retain 36 acres of land i.e. one unit of land only. Feeling aggrieved, the petitioners preferred Appeal No. 4/88 before the Assistant Collector, Vadodara who under his

order dated 13th January, 1989 allowed the appeal, and held that the petitioners were entitled to hold one-fifth of the unit in addition to one unit i.e. 43 acres and 7 gunthas of land and remanded the matter to the Mamlatdar for execution of the order. Feeling aggrieved, the petitioner preferred Revision Application No. 264/89 before the Tribunal. The petitioner claimed that the Kotar land should be excluded from the holding of the said Ganpatsingh Motisingh. The Tribunal negatived the claim, since the claim was adjudicated upon earlier under its order dated 21st August, 1984, and was not open to challenge. However, while considering the additional claim of one-fifth of the unit the Tribunal held that since the Mamlatdar has just given one unit to the petitioner, the family of the said Ganpatsingh Motisingh must have only five persons and not six persons as alleged by the petitioners. The Tribunal, therefore, rejected the Revision Application. Feeling aggrieved, the petitioners have preferred the present petition.

Mr. Patel, has submitted that the Tribunal has erred in rejecting the petitioners' claim for exclusion of the Kotar lands. He has also submitted that even if the finding of the Tribunal in support of the kotar lands had become final in the earlier Revision Application No. 1743/1983, the petitioners can still raise the said claim before this Court in the present proceedings.In support of this claims, he relies upon judgement of Hon'ble Supreme Court in the matter of KSHITISH CHANDRA BOSE Vs. COMMISSIONER OF RANCHI reported in(A.I.R. 1981, Supreme Court, 701). He has next contended that the decision of the Tribunal in so far as the petitioners' claim for the one-fifth of the unit is concerned is erroneous and requires to be set-aside. In the matter of KSHITISH CHANDRA BOSE Vs. COMMISSIONER OF RANCHI (Supra) the Hon'ble Court has held that;

"Where the High Court in second appeal though not having jurisdiction illegally reversed the concurrent finding of fact and ordered remand, the aggrieved party can, in an appeal to the Supreme Court from the final order of the High Court after remand, challenge even the first order of the High Court making remand and all the proceedings taken thereafter as a result of the illegal order of remand. The first judgement of the High Court ordering remand being illegal all the proceedings taken thereafter would become void ab initio. Judgements of the Patna High Court dated 17.02.1967 and 30.09.1970, Reversed."

The principle enunciated in the above judgement is well accepted proposition of law. However, in respect to the said land as recorded hereinabove the judgement of the Tribunal in Revision Application No. 1743/1983 was challenged before this Court in Special Civil Application No. 2034/1984 which was withdrawn with a view to filing a Review Application before the Tribunal. The review application was confined to the additional one-fifth unit claimed by the petitioners and certainly not in respect of Kotar lands. In so far as the alleged Kotar lands are concerned the decision of the Tribunal in Revision Application No. 1743/1983 has become final and was not open to challenge in the proceedings after remand, nor before this Court in the present petition.

So far as the petitioners' claim for additional one-fifth of the unit is concerned the reasoning adopted by the Tribunal is curious and wholly unsustainable. The Mamlatdar had in his order dated 4th July, 1988 in no uncertain terms held that there were six members in the family of Ganpatsingh Motisingh. The said finding was never questioned by the State Government. Even before the Tribunal there was no evidence to take a different view of the matter. The finding recorded by the Tribunal is based on the presumption as spelt out by the Tribunal. The said finding therefore, requires to be quashed and set-aside.

In view of the above discussion, the petition is partly allowed. The judgement and order dated 30th November, 1990 passed by the Tribunal in Revision Application No. 264/1989 (Annexure D to the petition) is quashed and set-aside. The order dated 13th January, 1989 of the Assistant Collector is restored to the extent it is held that the petitioners were entitled to additional land admeasuring 7 acres 8 gunthas. The order of the Mamlatdar dated 4th July, 1988 stands modified to the extent that the petitioners are entitled to retain the lands admeasuring 43 acres 8 gunthas of the 70 acres purchased from the said Ganpatsingh Motisingh. The remaining land to the extent of 26 acres 32 gunthas is held to be surplus land under the Act. The Mamlatdar shall now proceed further to acquire the above referred surplus land. Rule is made absolute to the above extent. The parties shall bear their own costs.

(Ms. R.M. DOSHIT,J.)

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